IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 312 OF 2003

IN

SUIT NO. 3091 OF 2002

Tata Motors Limited. .. Plaintiffs.

vs.

M/s. V.B. Patel Auto (Gujarat) Ltd., & Ors. .. Defendants.

Mr. N.G. Thakker, Sr. Counsel with Mr. A.V. Joshi and Mr. Vipul Bilve i/by Mulla & Mulla for plaintiffs.

Mr. H.C. Mehta with S. Nagvadaria & Ms. Dipti Shah i/by Mehta & Co. for defendants 2 to 4.

None for defendant no. 1.

CORAM : S.U.KAMDAR, J.

DATE : 20th February, 2006.

P.C.

. The present suit is filed against the defendants for the recovery of sum of Rs. 9,39,25,276.99. The principal amount being of Rs. 6,20,37,679.44 ps and interest on the principal amount is claimed at the rate of 18%. The defendant no. 1 is a company. The defendant no. 2 to 4 are

the directors and also the guarantors and are sued in the present suit in their capacity as guarantors. The plaintiffs have entered into a dealership agreement with defendant no. 1 on 2.1.2001. Under the terms and conditions of the said agreement it is inter alia provided that the defendant nos. 2 to 4 will give guarantee in respect of the transactions which are entered into under the said dealership agreement. The relevant clause is clause 21 of the said agreement. The said clause 21 reads as under :-

> "21. Directors of the Dealer in case the Dealer is a private or a public limited company and partners of the Dealer in case the Dealer is a firm shall be jointly and severally and personally liable to the Company for any dues receivable from the Dealer by the Company even after the Dealership is terminated notwithstanding their ceasing to hold the office or act in such capacity as the time of termination of the Dealership. The Company shall be entitled to require the directors or partners of the Dealer, as the case may be, to give to the Company their personal guarantees in such form as prescribed by the Company. In addition, the Company shall also be entitled to call for bank guarantee

> from the Dealer in respect of the Company's transactions with the Dealer if it is found desirable in the opinion of the Company."

Pursuant thereto, the defendant nos. 2 to 4 have given their guarantees all dated 23.1.2001 and the same are annexed as Exhibit B1, B2 and B3 to the plaint. Under the said guarantees the defendants nos. 2 to 4 have mentioned as under :-

> "I undertake to pay the amounts of money due and payable under the said Dealership Agreement on default being committed by the said Company without any delay or demur on your merely making a demand on me stating the said amount claimed is due and outstanding under the said Dealership Agreement."

Thus, by virtue of the said guarantee which has been executed by defendant nos. 2 to 4, the defendants are liable to make payments to the plaintiffs only in respect of the transactions which are executed and/or undertaken pursuant to the said dealership agreement. Clause 24 (a) of the dealership agreement provides that the dealership agreement is for the period from 1.1.2001 to 31.12.2003. This clause further provides that all transactions executed by and between the plaintiffs and the

defendants during the period 1.1.2001 to 31.12.2001 will be governed by the terms and conditions of the said dealership agreement. Clause 27 also provides that this agreement has been entered into in supersession of all previous agreements.

2. The present suit is filed in respect of various transactions and the bills of exchange issued by the defendant no. 1 and which are dishonoured. The said bills of exchange and the said transactions admittedly as mentioned in Exhibits D to D-101 to the plaint is for the period 23.6.2000 to 12.8.2000. All the 101 bills of exchange and invoices are for the period prior to the execution of the dealership agreement which is executed on 2.1.2001. Even the guarantees which are Exhibit B-1 to B-3 are executed on 23.1.2001. Thus, the said transactions covered by Exhibit D to D-101 are not covered either by the dealership agreement or by the guarantees.

3. The learned counsel for the plaintiffs has contended that as per the averments made in para 2 of the plaint, the liability is in respect of earlier partnership firm of the 1st defendant and the bills of exchange are pertaining to the earlier partnership firm. It has been contended that the said company was subsequently changed into a limited company and the permission was granted by the letter

dated 21.5.1998. It has been thus contended that therefore, even though the transactions are prior to the period of dealership agreement and prior to the date of bank guarantees, the defendant nos. 2 to 4 are liable as guarantors in respect of the past and earlier transactions under the aforesaid guarantees. It has been further contended that a meeting was held by and between the plaintiffs and the defendants on 24.4.2001 where the 2nd defendant was present as a director of the defendant no.1 company and has confirmed the liability to pay and, therefore, decree should be passed against the defendant nos. 2 to 4 even in respect of the transactions which are not covered by the dealership agreement and bank guarantees Exhibits B-1 to B-3.

4. On the other hand, the learned counsel for the defendant nos. 2 to 4 has contended that the guarantees must be strictly construed. The guarantee specifically provides that the guarantee is given only in respect of the transactions which are covered by the dealership agreement. He further states that admittedly the dealership agreement is of subsequent date to the suit transaction. Personal guarantee cannot be invoked against defendant nos. 2 to 4 in respect of such past transaction. He has relied upon the Full Bench judgment of the Gauhati High Court in the case of Chittaranjan Banerjee and another vs. Deputy

Commissioner of Lakhimpur, Dibrugarh and others, reported in AIR 1980 Gauhati 62 wherein the Full Bench has held as under :-

> "Under these circumstances, we are constrained to hold that the petitioners as sureties or guarantors were not liable under the terms and conditions of the present bond for any past debt or miscarriage of the Mouzadar and, as such, the contention of the petitioners must be upheld that the bond is not enforceable against the petitioners. We hold that the petitioners were not liable for any amount as surety under the bond in question and, as such, the Deputy Commissioner had no jurisdiction to commence the proceeding under Section 146 of the Regulation against the petitioner."

He has also relied upon the judgment of the Madras High Court in the case of J. Harigopal Agarwal and another v. The State Bank of India, Madras and others, reported in AIR 1976 Madras 211, particularly para 4 thereof which reads as under :-

> "4. So far as the second question is concerned, we have no doubt that the liability of the appellants as guarantors would arise only with reference to the

> borrowings or outstandings arising subsequent to the date of their becoming Directors and entering into a guarantee agreement and not anterior to that date. The learned Judge, who tried the suit, construed the guarantee agreement as covering the liability for the borrowings earlier to the date of the guarantee agreement. We are unable to agree with the construction which he has placed upon the document, Ex. P-10 is specific in its recitals, and there is nothing in it to indicate that the guarantors' liability would also cover the liability of the company by way of borrowing on the overdraft account anterior to the date of guarantee agreement."

5. I have considered the rival submissions. In my opinion defendant nos. 2 to 4 are entitled to unconditional leave to defend. Firstly because the transactions are for the period between 23.6.2000 to 12.8.2000. Obviously, therefore, the said transactions are neither covered by the said dealership agreement and consequently not covered by the said personal guarantees. The personal guarantees which are given are only pursuant to the dealership agreement dated 2.1.2001 and in fact the guarantees specifically recites that the claim of

the plaintiffs is covered only in respect of those transactions which are executed during the period of the dealership agreement. It is now well settled that the terms and conditions of the guarantee must be strictly construed and in my view on such construction of the guarantee, it is not possible to hold that the defendant nos. 2 to 4 are liable in respect of any of the transactions which are covered by Exhibits D to D-101 to the plaint. In so far as the defendant no. 1 is concerned, there is already a decree passed as against the defendant no. 1. In so far as defendant nos. 2 to 4 are concerned, they are only sued in the capacity of guarantors. In the light of the view I have taken, the defendant nos. 2 to 4 are entitled to unconditional leave to defend. However, the learned counsel for the plaintiffs has contended that in the minutes of the meeting dated 24.4.2001 the defendant no. 2 has admitted the liability and, therefore, he is liable to make payment. Firstly, the said minutes are between the plaintiff and the defendant no. 1. Defendant no. 2 attended the meeting as the director of the defendant no. 1 and not as a guarantor. Secondly the said minutes does not talk anything about guarantee and, therefore, in my view the contention advanced by the learned counsel for the plaintiffs about the said minutes cannot be accepted.

6. In the circumstances aforesaid the defendant nos. 2 to 4 are granted unconditional leave to defend the suit. Summons for judgment disposed of accordingly.

7. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.